IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 430

SAMUEL M. ATKINSON, ET AL.,
Petitioners,

vs.

SINCLAIR REFINING COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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THE SUNTHORP-WARREN PRINTING COMPANY, CHICAGO 36

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners pray that a writ of certiorari issue to review judgments of the United States Court of Appeals for the Seventh Circuit entered in the above-entitled case on April 25, 1961.

OPINIONS BELOW.

The United States District Court for the Northern District of Indiana, Hammond Division, issued an opinion on June 23, 1960. The opinion of the district court is reported in 187 F. Supp. 225 (1960), and is reprinted in Appendix A, attached hereto and made a part hereof. The opinion of the Court of Appeals is reported in 290 F. 2d 312 (1961), and is reprinted in Appendix B, which is attached hereto and made a part hereof.

JURISDICTION.

The judgment of the Court of Appeals was entered on April 25, 1961. On July 19, 1961, an order extending time for filing a petition for writ until September 22, 1961 was entered by Mr. Justice Clark. The jurisdiction of this Court is invoked under 28 USC Sec. 1254(1).

QUESTIONS PRESENTED.

This Petition raises three basic questions and a number of subsidiary issues which are presented by the decision of the Court of Appeals. These questions are outlined below:

1. The first basic question is whether a federal district court is required to dismiss, or in the alternative, to stay a suit for damages for breach of the no-strike clause of a collective bargaining agreement brought by an employer against a union and local union officials under Section 301 of the Labor Management Relations Act (1947) as amended (61 Stat. 136; 29 U. S. C. 141) and under diversity of citizenship jurisdiction pending arbitration of the dispute pursuant to the bargaining agreement. Subsidiary questions involved in the determination of the first basic question are:

   (a) Whether an employer's claim that an international union, the international's local affiliate, and local union officials participated in and instigated a work stoppage in violation of a no-strike provision of a collective bargaining agreement may be arbitrable under the arbitration provisions of the agreement.

   (b) If an employer's claim of breach of a no-strike clause may be subject to arbitration, whether it is the responsibility of a federal district court or an arbitrator to determine whether or not an alleged breach

of a no-strike clause is an arbitrable issue under the terms of a particular bargaining agreement.

(c) If an employer's claim of breach of a no-strike clause is subject to the primary jurisdiction of an arbitrator, whether a federal district court is required to specifically enforce the arbitration provisions of a collective bargaining agreement under Section 301 of the Labor Management Relations Act and to thereby dismiss, or in the alternative, to stay a suit for damages for breach of the no-strike clause brought by an employer pending a decision by the arbitrator.

2. The second basic question is whether a federal district court is required to dismiss, or in the alternative, to stay a suit for damages for breach of a no-strike clause of a collective bargaining agreement brought by an employer against a union and local union officials under Section 301 of the Labor Management Relations Act and under diversity of citizenship jurisdiction pending arbitration of common questions of fact and contract interpretation and application which have been raised by grievances submitted to arbitration prior to the initiation of the lawsuit attacking the right of the employer to discipline the local union officials for allegedly instigating and participating in the aforesaid breach of the no-strike clause.

3. The third basic question is whether a federal district court is required to dismiss a suit for damages brought by an employer against local union officials in their individual capacities under the court's diversity of citizenship jurisdiction for alleged participation in and instigation of a breach of a no-strike clause of a collective bargaining agreement entered into between the employer and an international union and its local affiliate. Subsidiary questions involved in the third basic question are:

(a) Whether a cause of action exists under federal

law against local union officials for alleged participation and instigation of a work stoppage in violation of a no-strike clause of the collective bargaining agreement.

(b) Whether a cause of action against local union officials in their individual capacities for the aforesaid conduct brought under the common law of the State of Indiana conflicts with federal substantive law and the jurisdiction of the National Labor Relations Board as established by Congress in the Labor Management Relations Act.

(c) Whether the no-strike clause of a collective bargaining agreement entered into between an employer and a union imposes individual contractual responsibilities on each employee running to the employer.

(d) Whether the aforesaid suit for damages against local union officials in their individual capacities is a valid cause of action cognizable under state common law.

STATUTES INVOLVED.

Section 301 of the Labor Management Relations Act, 1947, 61 Stat. 156, 29 U. S. C. 185, provides, in pertinent part, as follows:

> SEC. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
>
> SEC. 301. (b) Any labor organization which represents employees in an industry affecting employees in an industry affecting commerce as defined in this Act

and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

STATEMENT.

The petitioners are Oil, Chemical and Atomic Workers International Union, AFL-CIO; and its local affiliate, Local 7-210 of the Oil, Chemical and Atomic Workers International Union, AFL-CIO (hereinafter referred to, respectively, as the International Union and the Local Union), labor organizations representing the employees of the respondent; Sinclair Refining Company; and Samuel M. Atkinson and other named individual petitioners (hereinafter referred to as the Local Officials), officials of the Local Union and members of the International Union, who are employees of the Sinclair Refining Company's refinery located in East Chicago, Indiana. Sinclair Refining Company is a corporation (hereinafter referred to as the Employer) owning and operating an oil refinery in East Chicago, Indiana. The employer is alleged to be incorporated under the laws of the State of Maine and maintaining its principal office in the State of New York. The employer is engaged in an industry affecting commerce and subject to the Labor Management Relations Act, 1947.

In June, 1953, the Employer and the International and Local Unions entered into a collective bargaining agreement. This Agreement covered wages, hours and other conditions of employment. In June, 1959, the agreement expired and a new agreement was negotiated and entered

into between the Employer and the International and Local Unions.

Article III of the agreement contained a no-strike clause which is one of a type usually found in labor management contracts, limiting the right of the contracting unions to cause strikes or work stoppages during the term of the bargaining agreement. Article XXVI of the agreement contained a provision providing for the compulsory arbitration of "any difference regarding wages, hours or working conditions between the parties hereto or between the employer and an employee covered by this working agreement which might arise within any plant or with any region of operations," which could not be satisfactorily resolved through a grievance procedure or by settlement of the parties. The agreement provided that should arbitration be required, that an impartial arbitrator was to be selected by mutual understanding of the parties from a panel submitted by the Federal Mediation and Conciliation Service.

On or about February 13-14, 1959, a work stoppage took place among the employees at the employer's East Chicago refinery. Following the work stoppage, the employer disciplined twelve Local Union Officials for allegedly breaching the bargaining agreement by fomenting, assisting and participating in the work stoppage. The Local Union denied that any of the twelve officials were in any way responsible for the work stoppage and filed grievances on their behalf with the employer. The Local Union and the Employer have been unable to resolve or settle these grievances so that the question of the right of the Employer to discipline the Local Officials has been submitted to arbitration. As of this date, the dispute is still awaiting determination by arbitration and an impartial arbitrator has not as yet been appointed (Jt. App. 94-95).

During the time the Local Union was processing the

aforesaid grievances, the Employer commenced the subject lawsuit in the United States District Court for the Northern District of Indiana. The employer sought damages from the International and Local Unions and the Local Union Officials in their individual capacities, jointly and severally, in the sum of $12,500.00 for alleged breach of the collective bargaining agreement; a declaration of rights; and a permanent injunction against the International and Local Unions; the Local Officials and agents; servants; counselors and all to whom notice may come from in any way participating in any stoppage or work interference with production under any collective bargaining agreement between the parties or any extension thereof.

The International and Local Unions and the Local Officials filed motions to dismiss, or in the alternative, to stay the action, contending:

1. That the issues in dispute were subject to the arbitration provisions of the collective bargaining contract between the unions and the employer;

2. No cause of action existed against the Union Officials in their individual capacities;

3. The action for declaratory judgment and injunction was in violation of the Norris-LaGuardia Act, 29 U. S. C., Sec. 101, and beyond the equity powers of the court (Jt. App. 89-95).

The district court dismissed the action against the Union Officials in their individual capacities, holding that union members or officers cannot be held individually liable for acts of their union in violation of a collective bargaining contract under Section 301 of the Labor Management Relations Act. It also held that under established common law principles, union officials and members cannot be held personally liable for inducing a breach of the collective bargaining contract entered into by their organization (Jt. App. 139-140). The district

court also dismissed the action for declaratory judgment and injunction against all the parties on the basis that the suit at bar involved a labor dispute within the meaning of Section 13(c) of the Norris-LaGuardia Act (Jt. App. 140-141).

The district court denied the motion to dismiss or stay the action pending arbitration of the dispute. The court held that Section 301 of the Labor Management Relations Act assigned to the courts the duty of determining whether a union had breached its promise not to strike over arbitrable grievances. The court further held that the pending grievances brought by the Local Union on behalf of the Union Officials, had no bearing on whether a breach of contract was committed by the Unions (Jt. App. 141-142).

The International and Local Unions appealed the district court's denial of their motion to dismiss or stay the action pending arbitration to the Court of Appeals for the Seventh Circuit, pursuant to Section 1292(a)(1), Title 28 of the United States Code. The employer appealed the district court's dismissal of the action against the Union Officials and its request for declaratory judgment and injunction to the Court of Appeals, pursuant to the interlocutory appeals provisions of Title 28, U. S. C., Section 1292(b).

On appeal, the Court of Appeals affirmed, in part, and reversed, in part, the district court's judgment. The dismissal of that part of the suit seeking a declaratory judgment and injunction was affirmed, the Court of Appeals sustaining the district court's holding that the Norris-LaGuardia Act barred such an action.

The Court of Appeals reversed the district court's judgment dismissing the action against the Union Officials in their individual capacities. The court held that Section 301 of the Labor Management Relations Act does not preclude liability of individual employees for partici-

pating in or inducing a work stoppage in violation of a collective bargaining agreement's no-strike clause. In support of its holding, the Court of Appeals stated in its opinion that although a judgment against a labor organization is not enforceable against its members, this fact does not effect an action against individual members for their individual breaches of contract. The Court of Appeals, in remanding this part of the case, also stated in its opinion that although "there are strikes for work stoppages without union participation * * * there can be work stoppages caused and participated in by some employees, but not others" (App. B, p. 34). In remanding the action against the Union Officials, the Court of Appeals held further that there is no conflict between a common law suit for damages against individuals for participating in any strike or work stoppage in violation of a bargaining agreement and the substantive provisions of the Labor Management Relations Act. The court also held that a suit for damages against Union Officials for participating in a breach of contract entered into by their organization did not conflict with common law precepts.

The district court's denial of a motion to dismiss or stay pending arbitration was sustained. The Court of Appeals held that the question of whether the International and Local Unions breached the no-strike provision of the collective bargaining agreement was not subject to the arbitration provisions of the agreement. The court interpreted the provisions of the agreement as precluding jurisdiction of an arbitrator over this type of dispute and rejected the Union's contention that an arbitrator should pass on this question in that a reasonable interpretation of the contract requires the arbitrator to assume jurisdiction.

The Court of Appeals also sustained the district court's holding that the pending grievances concerning the Em-

ployer's disciplinary action against the Local Officials for participating in the work stoppage were not relevant to the issues raised in the lawsuit.

This petition for writ of certiorari seeks the Court to review that part of the judgment of the Court of Appeals, affirming the district court's denial of the motion to dismiss or stay this action pending arbitration and that part reversing the order of the trial court, dismissing the action against the Union Officials in their individual capacities.

REASONS FOR GRANTING THE WRIT.

1. There is clear conflict among the circuit courts of appeal on the first basic question of whether an alleged breach of a no-strike clause of a collective bargaining agreement is an arbitrable issue. The following decisions all involved suits brought in federal district courts by employers against unions for breach of a no-strike clause of a bargaining agreement under Section 301 of the Labor Management Relations Act. The Court of Appeals for the Second Circuit in *Signal Stat.* v. *U. E.,* 235 F. 2d 298 (1956), cert. den'd 354 U. S. 911 (1957) stayed an action for damages and ordered the employer to submit the issue of the defendant union's alleged breach of a no-strike clause to arbitration. The same holding was reached by the Court of Appeals for the Third Circuit in *Tenney Engineering* v. *U. E.,* 207 F. 2d 450 (1953). Contrary decisions have been reached by the Court of Appeals for the Sixth Circuit in *International Union* v. *Benton Harbor Malleable Industries,* 242 F. 2d 536 (1957), cert. den'd 355 U. S. 814 (1957) and the Court of Appeals for the Fourth Circuit in *International Union* v. *Colonial Hardwood Flooring Co.,* 168 F. 2d 33 (1948).

The aforementioned decisions preceded the rulings of the Supreme Court of the United States in *United Steel-*

workers v. *American Manufacturing Co.*, 363 U. S. 564, 4 L. Ed. 2d 1403, 80 S. Ct. 1343 (1960); *United Steelworkers* v. *Warrior & Gulf Navigation Company*, 363 U. S. 574, 4 L. Ed. 2d 1409, 80 S. Ct. 1347 (1960) and *United Steelworkers* v. *Enterprise Wheel & Car Company*, 363 U. S. 593, 4 L. Ed. 2d 1424, 80 S. Ct. 1358 (1960). These opinions of the Court established guideposts for the federal courts in determining the arbitrability of a dispute under a collective bargaining agreement. Although federal district courts still follow the decisions of their courts of appeals in deciding whether an arbitrator or the court has primary jurisdiction over strikes and work stoppages during the life of a bargaining agreement, there is a serious question whether the opinions of the courts of appeal denying jurisdiction to an arbitrator have vitality since the decisions of this Court in *American Manufacturing, Warrior and Gulf* and *Enterprise Wheel.*

The issue on which this conflict rests is of significance and immediate importance to the course of labor-management relations today. The history of collective bargaining in the post-war era has been marked by the development of an extensive arbitration process for resolving disputes during the life of collective bargaining agreements. Decisions of the Supreme Court have reflected this development in recognizing and enforcing the primary jurisdiction of arbitration over labor disputes.

The Court established the principle of the enforceability of mutual obligations of unions and employers to arbitrate in *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448, 1 L. Ed. 2d 972, 77 S. Ct. 912 (1957). Subsequently, the arbitration process was given greater breadth and significance by this Court's decisions in *American Manufacturing, Warrior and Gulf* and *Enterprise Wheel* through reaffirmation of the enforcement principle, coupled with marked restrictions on the district court's power in limit-

ing the authority of an arbitrator to decide his own jurisdiction and the merits of a controversy. The decision of the Court of Appeals for the Seventh Circuit in this case and other like decisions from other courts of appeal would carve out an exception to the arbitrator's jurisdiction in the case of strikes and work stoppages. It is apparent that it is of the utmost importance to the future course of collective bargaining that this Court determine whether labor management difficulties culminating in strikes and work stoppages during the term of a bargaining agreement are to be mainly resolved through the judicial processes or the arbitration system.

2. The second basic question is entwined with the first. Both the district court and the court of appeals refused to stay the action pending the resolution of whether the Employer had the right to discipline the Union Officials for engaging in the work stoppage, holding that this question was irrelevant to the controversy at law. The district court and the court of appeals founded their decision on the basic proposition that the arbitration process has no bearing on a suit for damages for breach of a collective bargaining agreement brought under Section 301 of the Labor Management Relations Act. The fundamental issue in the second basic question, we believe, will be resolved once this Court determines to what extent, if any, suits brought under Section 301 are limited by the arbitration provisions of a bargaining agreement.

3. The third basic question involves some of the most important and current unresolved issues in the labor law field. The Court of Appeals' decision reversing the district court and allowing a suit for damages against the Local Officials in their individual capacities, is squarely in conflict with the decision of the Federal District Court for Iowa in *Wilson and Co.* v. *United Packinghouse Workers,* 181 F. Supp. 809 (D. C. Iowa, 1960). This conflict was

learly underscored by the Court of Appeals on pages 11-2 of its opinion (App. A). The suit against the Local fficials was founded on state common law and brought nder diversity of citizenship jurisdiction. There is an nportant decision by the highest court of the State of Vashington, which is contrary to the decision of the Fed-al District Court of Iowa and the district court in the resent action and in support of the decision of the Court f Appeals. In *Baun* v. *Lumber and Saw Mill Workers,* 6 Wash. 2d 645, 284 P. 2d 275 (1955) the state court held at the Labor Management Relations Act did not effec-vely prohibit common law actions against individual nion members and officials for participation in violations f collective bargaining agreements.

In addition to the direct conflict that exists between the oremention decisions, there are important decisions f this Court which directly affect this controversy. In *incoln Mills,* the Supreme Court held that Section 301 of e Labor Management Relations Act forged the creation f a body of federal substantive law for the interpretation nd enforcement of collective bargaining agreements. In *Vestinghouse Employees* v. *Westinghouse Corp.,* 348 U. S. 37, 99 L. Ed. 510, 76 S. Ct. 488 (1955) this Court held at Section 301 did not allow for any suits by or against dividuals for breach of bargaining agreements. In *Lewis* *Benedict Coal Corp.,* 361 U. S. 459 (1960) the Court early distinguished between the obligations of a union an organizational entity under a bargaining agreement nd the personal rights and interests of employees covered the agreement. The present case raises the question nether the impact of this series of Supreme Court deci-ons establishes Section 301 as the exclusive authority ntrolling suits for violations of bargaining agreements.

In addition to the aforementioned decisions of this Court, the petitioners further submit that *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236, 3 L. Ed. 2d 775, 79 S. Ct. 773 (1959) is controlling. We submit that since the *Garmon* decision, state courts and federal courts under diversity of citizenship jurisdiction cannot assume jurisdiction over a labor controversy which may come under the purview of the Labor Management Relations Act. The question thereby to be resolved by this Court is whether the *Garmon* decision is to be understood in light of *Westinghouse* and *Lincoln Mills* so as to exclude state common law actions based on breaches of collective bargaining agreements or whether the *Garmon* decision is limited only to common law suits which may conflict with the jurisdiction of the National Labor Relations Board.

Even if this Court were to so limit the *Garmon* decision to common law actions which may be in conflict with the National Labor Relations Board, the issues presented by the present action would still be unresolved. We submit that the decision of this Court in *Mastro Plastics Corp.* v. *N. L. R. B.*, 350 U. S. 270, 100 L. Ed. 309, 76 S. Ct. 349 (1956) controls this issue. In that case, the Supreme Court held that a work stoppage during the life of a no-strike clause may be protected activity under Section 7 of the Labor Management Relations Act and, therefore, within the primary jurisdiction of the National Labor Relations Board.

Whether or not a common law action can be maintained against union members and officials in their individual capacities there still remains the important question of whether the action conforms with common law precedent. The District Court for Iowa in *Wilson and Co.* v. *United Packinghouse Workers* held that basic tort and contract principles did not allow an action against union officials, in their individual capacities, as agents of their organiza-

tion for a breach of contract entered into by their organization. The Court of Appeals for the Seventh Circuit rejected the district court's interpretation of the common law in holding that Union Officers are not insulated from liability as employees of an employer for inducing a breach of the bargaining agreement entered into by the employer.

We invite the Court's attention to a recent article directly focusing on many of the issues raised by this Petition. Richard A. Givens, *Responsibility of Individual Employees for Breaches of No-Strike Clauses,* Vol. 14 Ind. & Lab. Rel. Rev. 595 (July, 1961).

In sum, the issues presented by this Petition for Writ of Certiorari involve direct conflict between the circuit courts of appeal. A review by the Supreme Court would also resolve significant questions concerning the application of recent decisions of this Court to the type of labor management disputes which underlie this action.

CONCLUSION.

For the reasons stated, it is respectfully submitted that this Petition for a Writ of Certiorari be granted.

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APPENDIX A.

THE UNITED STATES DISTRICT COURT
Northern District of Indiana,
Hammond Division.

Sinclair Refining Company
vs.
Samuel M. Atkinson, et al.
} No. 2566 Civil.

MEMORANDUM OF DECISION.

The matter is before the court principally on a motion to vacate its order of March 12, 1960, and to grant a rehearing on several motions which were the subject of the March 12th order.

A rehearing has been afforded the defendants. After oral argument and submission of briefs on the motion for rehearing, I have come to the conclusion that the March 12th order should be vacated and a new order entered which modifies substantially the older order. A memorandum setting forth the reasons for the new order seems appropriate.

Dismissal of Count I.

As I understand defendants' contention, it is that if there are possibly protected or prohibited union activities under §§ 7 and 8 of the Labor Management Relations Act involved in the factual situation whereby the "no-strike" agreement was allegedly breached, the court cannot enter-

tain jurisdiction under § 301 of the Act. They cite *San Diego Bldg. Trades Council* v. *Garmon*, 359 U. S. 236, and *Plumbers* v. *County of Door*, 359 U. S. 354.

The *Garmon* and *Door* cases dealt with pre-emption of state-court jurisdiction where there were present or arguably present protected or prohibited union activities which came within the jurisdiction of National Labor Relations Board under §§ 7, 8 and 10 of the Act. Neither case presented the problem of a conflict between the jurisdiction of the Board and the courts because of a possible overlap of activities protected or prohibited by §§ 7 and 8 and at the same time the basis for a violation of a labor contract enforceable under § 301.

The alleged violation of a collective bargaining contract is the basis of Count I. There is nothing in the record at this point to indicate that the events claimed to constitute a violation of the contract also involved either protected or prohibited activity. But even the presence of such activities would not give preferential jurisdiction to the Board and oust that of the courts. The responsibility of enforcing labor contracts lies in the courts; otherwise there would have been no need for enacting § 301.

Dismissal of Count II.

The Court's attention has been called to two cases not considered at the time the motion to dismiss was originally ruled upon, *Lewis* v. *Benedict Coal Corp.*, 361 U. S. 459, and *Wilson & Co.* v. *United Packinghouse Wkrs. of America*, 181 F. Supp. 809 (N. D. Iowa, 1960).

Judge Craven in the *Wilson* case, after an exhaustive discussion of the identical problem, concluded that the officers of the labor union are not individually liable for the inducement of a breach of a collective bargaining

contract where the union is being sued under § 301 of the Taft-Hartley Act for the breach. In his opinion, Judge Craven cited the *Lewis* case in support of his conclusion. In that case the Supreme Court in the majority opinion stated:

> "Section 301(b) of the Taft-Hartley Act provides that 'any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.' At the least this evidences a congressional intention that the union as an entity, like a corporation, should in the absence of agreement be the sole source of recovery for injury inflicted by it. * * *."

It is clear from the language in the *Lewis* case that a labor union when sued under § 301 must be treated as if it were a corporation. It is also made clear that union members or officers cannot be held individually liable for acts of the union, as, similarly, stockholders and officers of a corporation are not liable for corporate acts.

It is generally the law that officers and employees of a corporation cannot be held liable for inducing a breach of its contract. *Wilson & Co.* v. *United Packinghouse Wkrs. of America, supra;* 30 *Am. Jur., Interference,* § 37; *Hicks* v. *Haight,* 171 Misc. 151, 11 N. Y. S. 2d 912 (1939); 26 *A. L. R.* 2d 1270. By analogy, and having in mind the language in the *Lewis* case, a union member or officer cannot be held liable for inducing the breach of a union contract.

The fact that Count II is based on diversity jurisdiction is not determinative of the motion. Section 301 is more than a procedural statute; it is also substantive. The section is the statutory source of federal law governing remedies for violations of collective bargaining contracts.

Textile Wkrs. etc. v. *Lincoln Mills of Alabama,* 353 U. S. 448.

Drawing, then, from general corporate law, and relating it to suits for breaches of collective bargaining contracts under § 301 as that section has been construed by the Supreme Court, the conclusion is inevitable that suits of the nature alleged in Count II are no longer cognizable in state or federal courts.

Dismissal of Count III.

Plaintiff urges that since *Lincoln Mills* allowed specific enforcement of the agreement to arbitrate the case now compels specific enforcement of the no-strike agreement received in exchange for the promise to arbitrate. It contends that the Norris-LaGuardia Act should not preclude injunctive relief in the case at bar because the conditions which prompted passage of that Act no longer obtain.

That the suit at bar involves a labor dispute within the meaning of § 13(c) of the Norris-LaGuardia Act is beyond dispute. That it also involves an alleged breach of a no-strike clause of a collective bargaining agreement does not alter the fact a labor dispute exists under the definition of § 13(c) of the Act. *A. H. Bull Steamship Co.* v. *National-Marine Eng. B. Assn.,* 250 F. 2d 332.

Since the original ruling on the motion to dismiss Count III, the Supreme Court decided *The Order of Railroad Telegraphers, et al.* v. *Chicago & N. Western R. Co.,* on April 18, 1960. In that case the Supreme Court left no doubt that § 4 of the Norris-LaGuardia Act withdraws jurisdiction from the federal courts to issue injunctions to prohibit the refusal "to perform work or remain in any relation of employment" in cases involving *any* labor dispute.

Upon reconsideration and in light of the opinion in *Railroad Telegraphers,* I have come to the conclusion that *Lincoln Mills* does not remove the sweep of the Norris-LaGuardia Act so as to permit the specific enforcement of a no-strike clause in a labor contract.

Motion to Stay.

Defendants seek a stay of the action on the ground that certain grievances filed as the result of the strike or work stoppage alleged in the complaint are subject to arbitration in accordance with the procedure outlined in the contract. In my opinion the resolution of these grievances by arbitration would not decide whether there was a strike or work stoppage and whether there occurred thereby a breach of the contract by the union which promised not to permit work stoppages or strikes over matters which are subject to arbitration. *Lincoln Mills* permits a labor union to sue under § 301 for specific performance of a promise by the employer to arbitrate grievances defined in the collective bargaining agreement. For similar reasons, the employer has the right under § 301 to sue the union for a violation of the no-strike clause.

In *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.,* decided by the Supreme Court on June 20, 1960, the majority opinion said in part:

> "The Congress, however, has by § 301 of the Labor Management Relations Act, assigned the courts the duty of determining whether the reluctant party has breached his promise to arbitrate."

Paraphrasing the above language, Congress by § 301 assigned to the courts the duty of determining whether the union has breached its promise not to strike over arbitrable grievances.

The arbitration of grievances filed by union members over disciplinary action taken by the company as a result of the alleged strike involves issues quite distinct from the issue whether the union violated its contract. For that reason the motion to stay must be denied.

/s/ Luther M. Swygert,
United States District Judge.

Hammond, Indiana,
June 23, 1960.

APPENDIX B.

IN THE UNITED STATES COURT OF APPEALS
for the Seventh Circuit.

September Term, 1960—April Session, 1961.

Nos. 13092, 13136
Sinclair Refining Company,
Plaintiff-Appellant,
vs.
Samuel M. Atkinson, et al.,
Defendants-Appellees.

No. 13137
Sinclair Refining Company,
Plaintiff-Appellee,
vs.
Samuel M. Atkinson, et al.,
Defendants-Appellants.

Appeals from the United States District Court for the Northern District of Indiana, Hammond Division.

April 25, 1961

Before SCHNACKENBERG, CASTLE and MAJOR, *Circuit Judges.*

CASTLE, *Circuit Judge.* Sinclair Refining Company, plaintiff-appellant, hereinafter referred to as plaintiff, commenced this action in the District Court. It seeks damages for alleged breach of a no-strike clause of a collective bargaining agreement; a declaration of rights; and a permanent injunction.

Count I of the complaint invokes jurisdiction under

Section 301 of the Labor-Management Relations Act (29 U. S. C. A. § 185); names Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Local No. 7-210 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, as defendants; alleges in substance that the International and Local constitute the recognized collective bargaining agent for approximately 1700 production and maintenance employees in a bargaining unit confined to plaintiff's East Chicago, Indiana, refinery, and that said Unions by their officers, committeemen and other agents caused a strike or work stoppage by approximately 999 of the employees within the bargaining unit on February 13 and 14, 1959 over asserted pay claims of three members, aggregating $2.19, and which were arbitrable under the grievance procedure of the current collective bargaining agreement, and that the work stoppage was in violation of the no-strike clause of the agreement and caused damages to plaintiff by way of out-of-pocket expenses in the amount of $12,500.00 for which recovery is sought.

Count II is based on diversity. It names as defendants 24 individuals, employees of plaintiff at the East Chicago refinery, who are committeemen of the Local and agents of the International. It incorporates the allegations of Count I concerning the collective agreement and it seeks damages from the individual defendants in the same amount and for the same work stoppage. It alleges that the individual defendants "contrary to their duty to plaintiff to abide by said contract, and maliciously confederating and conspiring together to cause the plaintiff expense and damage, and to induce breaches of the said contract, and to interfere with performance thereof by said labor organizations and the affected employees, and to cause breaches thereof, individually and as officers, committeemen and agents of the said labor organizations, fomented, assisted and participated" in the strike or work stoppage.

Count III is based on diversity with respect to the same 24 individual defendants named in Count II and asserts jurisdiction under Section 301 of the Labor-Management Relations Act (29 U. S. C. A. § 185), as well as diversity, with respect to the Local and International Unions. In addition to the allegations of Counts I and II it alleges eight previous strikes or work stoppages at the East Chicago refining during the term of the current collective agreement over matters subject to its grievance procedure and provisions for arbitration, damaging plaintiff greatly in excess of $10,000.00. It seeks a declaration of the validity and enforceability of the no-strike and grievance provisions of the contract and a permanent injunction restraining and enjoining all of the defendants "from aiding, abetting, fomenting, advising, participating in, ratifying, or condoning any strike, stoppage of work, slowdown or any other disruption of, or interference with normal employment or normal operation or production by any employee within the bargaining unit at plaintiff's East Chicago, Indiana, refinery" covered by the current collective agreement "in support of, or because of, any matter or thing which is, or could be, the subject of a grievance under the grievance procedure of said contract, or any extension thereof, or any other contract between the parties which shall contain like or similar provisions".

The defendants filed a motion to dismiss and a motion to stay. The District Court denied the motion to stay and denied the motion to dismiss as to Count I (action against Unions for damages) but granted the motion to dismiss and entered judgment dismissing Counts II (action against individual defendants for damages) and III (declaratory and injunctive relief).

The plaintiff appealed the dismissal of Counts II and III.[1] The defendants appealed the denial of the motion to stay.[2] The plaintiff's appeal (Nos. 13092 and 13136) has not been consolidated with defendants' appeal (No. 13137). However, to avoid unnecessary repetition we elect to treat them as consolidated for the purpose of disposition in one opinion.

The main contested issues presented by plaintiff's appeal are:

(1) Whether 29 U. S. C. A. § 185 precludes suit for recovery of damages from individual union officer-company employees for inducing or participating in a strike or work stoppage in violation of a no-strike clause of a collective bargaining agreement covering the unit to which they belong.

(2) Whether 29 U. S. C. A. § 101 precludes injunctive relief to restrain a future breach of a no-strike clause of a collective bargaining agreement.

Those presented by defendants' appeal are:

(1) Whether the collective bargaining agreement here involved required the employer to submit to arbitration any claim he might make for damages caused by breach of the agreement's no-strike clause.

(2) Had the employer submitted the claim to arbitration?

We will first consider the issues raised by defendants' appeal. The defendants contend that since the cause of action against the Local and International is based on an alleged violation of the no-strike clause of the collective agreement, the dispute is first subject to adjustment and

1. Plaintiff states that in order to avoid any question of finality of the District Court's orders both an interlocutory appeal (No. 13092) and a regular appeal (No. 13136) were perfected. Plaintiff's appeals have been consolidated.

2. Defendants' appeal was perfected pursuant to 28 U. S. C. A. § 1292 (a) (1).

determination under the arbitration procedure of the agreement and that no action can be brought until these procedures are exhausted. Defendants further contend that the causes of action against all of the defendants must be stayed until a determination of the issues raised in pending arbitrations is made because such issues are the same as those "which the plaintiff has sought the court to decide under the allegations of its complaint". This latter contention is based in part on the contents of an affidavit filed in support of the motion to stay. The affidavit recites that as a result of the work stoppage which occurred February 13 and 14, 1959 certain grievances are pending, pursuant to the grievance and arbitration procedure of the contract, involving disciplinary action taken against some of the individual defendants for allegedly fomenting, assisting and participating in such strike or work stoppage, and that the disputes which caused the eight previous work stoppages referred to in Count III of plaintiff's complaint have all been disposed of pursuant to the grievance procedure of the contract except the question of the compensation of one worker, which is the subject of a pending grievance. A counter-affidavit filed by plaintiff discloses that the grievances of the individual defendants were filed subsequent to the work stoppage of February 13 and 14, 1959 and involve either the three day claims aggregating $2.19 concerning deductions made by the plaintiff from compensation of the employees because of their reporting for work late, which deductions allegedly caused the work stoppage, or relate to the plaintiff's refusal to compensate individual defendants for time spent processing grievances contrary to disciplinary restrictions imposed by plaintiff, because of the work stoppage, on their engaging in such activity. It is further recited that the parties have been unable to agree on a settlement or disposition of the grievances, that both the

Union and the plaintiff have named arbitrators but that a third or impartial arbitrator had not as yet been selected.

The collective bargaining agreement here involved is for a term beginning June 15, 1957 and continuing to June 14, 1959 and thereafter unless terminated by either party on sixty-days' written notice. The agreement contains both a no-strike clause and an arbitration clause.

The no-strike clause is as follows:

> "Union further agrees that during the term of this Agreement there shall be no strikes or work stoppages:
>
> (1) For any cause which is or may be the subject of a grievance under Article XXVI of this Agreement, or
>
> (2) For any other cause, except upon written notice by Union to Employer provided:
>
> (a) That Employer within thirty (30) days from the receipt of such notice will meet with the representatives of the Union and endeavor to reach an agreement on the matter in dispute.
>
> (b) In the event an agreement is not reached within forty-five (45) days after the expiration of the thirty (30) day period specified in (a) hereof, Union, upon the expiration of such forty-five (45) day period, may exercise its right to strike by serving fifteen (15) days' notice in writing upon Employer of Union's intention to strike at the expiration of such notice" * * *

Article XXVI of the agreement sets forth the grievance and arbitration procedure. It defines "grievance" as follows:

> "A grievance is defined to be any difference regarding wages, hours, or working conditions between the parties hereto or between the Employer and an em-

ployee covered by this working agreement which might arise within any plant or within any region of operation."

The Article then sets forth detailed provisions as to how "grievances" are to be processed and considered culminating with provisions for arbitration if the grievance is not resolved at one of the earlier stages of the procedure.

We are mindful of the congressional policy in favor of the settlement of disputes in the labor-management field through the machinery of arbitration. This was recognized in *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448, 456, and since reconfirmed in *United Steelworkers of America* v. *Warrior & Gulf Navigation Company*, 363 U. S. 574, 582-583, in which the Supreme Court admonished that in the interpretation of arbitration clauses of collective bargaining agreements "[d]oubts should be resolved in favor of coverage". Nevertheless *Warrior* also affirms that "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit".

Defendants' reliance upon *Warrior* and the similar teachings found in *United Steelworkers of America* v. *American Manufacturing Company*, 363 U. S. 564 and *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U. S. 593, is misplaced. The arbitration clause here under consideration contracts to submit to arbitration only a grievance which is a "difference regarding wages, hours or working conditions." The claim of the employer for damages relates to neither wages, hours nor working conditions. It does not involve a subject which it has contracted to submit to arbitration. The arbitration clauses considered in *Warrior* and *American Manufacturing* were broad in scope. They called for arbitration of all disputes or differences as to the "meaning" and "ap-

plication" of the agreement. Likewise distinguishable by reason of the broad scope of the arbitration clauses involved are *Signal-Stat* v. *Local 475, United Electrical R. & M. Wkrs.*, 2 Cir., 235 F. 2d 298; *Tenney Engineering Inc.* v. *United Electrical, R. & M. Wkrs.*, 3 Cir., 207 F. 2d 450 and *Lewittes & Sons* v. *United Furniture Workers*, S. D. N. Y., 95 F. Supp. 851 cited by defendants. We conclude that giving the language of the arbitration clause here under consideration its broadest scope it is not susceptible of an interpretation that covers the asserted dispute. (Cf. *Drake Bakeries, Inc.* v. *Local 50, American Bakery and Confectionery Workers, International, AFL-CIO*, 2 Cir., ... F. 2d ..... (February 17, 1961), 42 LC 16,798; *International Union* v. *Colonial Hardwood Floor. Co.*, 4 Cir., 168 F. 2d 33, 35; *Cuneo Press, Inc.* v. *Kokomo Paper Handlers' Union No. 34*, 7 Cir., 235 F. 2d 108, 111, cert. den. 352 U. S. 912; *United Electrical R. & M. Wkrs.* v. *Miller Metal Products, Inc.*, 4 Cir., 215 F. 2d 221; *Hoover Motor Express Co.* v. *Teamsters, Chauffeurs, Etc.*, 6 Cir., 217 F. 2d 49, 53; *International Union* v. *Benton Harbor Malleable Industries*, 6 Cir., 242 F. 2d 536, 540-541, cert. den. 355 U. S. 814.

Nor are we impressed with defendants' contention that because certain grievances of the individual defendants have been submitted to arbitration under the provisions of the agreement plaintiff is bound to submit its claim for damages to arbitration. The employee grievances involve the pay deductions which precipitated the work stoppage and disciplinary restrictions imposed for participation therein. That some of the underlying issues which are or may become involved in the determination of those grievances may also possibly become an issue to be resolved in the ultimate adjudication of plaintiff's suit—the issues of which are yet to be framed by pleadings as yet unfiled—does not in our opinion require a stay of plaintiff's

action. Plaintiff has not submitted the subject matter of its action to arbitration, nor consented to such arbitration, merely because in conformity with its contract it is arbitrating employee grievances which involve some factors or "issues" in common with those which could possibly arise in the suit. The fact that a grievance under arbitration and a court action may share some issue or factor in common does not establish identity of subject matter. What plaintiff has submitted to arbitration under its contract to arbitrate are matters different from the subject matter of its suit. It has not agreed to arbitrate the latter —and submission to arbitration is a matter of contract.

We conclude that the District Court did not err in denying a stay of plaintiff's action.

The District Court's dismissal of Count II of the complaint was based on the view that under Section 301 of the Labor-Management Relations Act (29 U. S. C. A. § 185)[3] suits of the nature alleged in Count II are no longer cognizable in state or federal courts. In our opinion the District Court erred in so concluding and in dismissing Count

3. Hereinafter referred to as Section 301, and which, in so far as pertinent, reads as follows:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organizations may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

II. The 24 individuals named in Count II are employees of the plaintiff as well as members and officers of the Local Union and agents of the International. They were in the bargaining unit covered by the collective agreement. Whether these individuals are regarded "somewhat as" third party beneficiaries to the collective contract[4] or that contract, though not signed by or naming them, is one directly between them and the employer, negotiated by their agent, because incorporated in the individual contract of hire[5], they are bound by its provisions. *Young* v. *Klausner Cooperage Company*, 164 Ohio St. 489, 132 N. E. 2d 206; *Owens* v. *Press Publishing Co.*, 20 N. J. 537, 120 A. 2d 442; *McLean Distributing Company* v. *Brewery and Beverage Drivers, et al.*, 254 Minn. 204, 94 N. W. 2d 514, cert. den. 360 U. S. 917. The individual defendants are bound by the no-strike clause of the agreement. We do not mean to imply that the individual defendant is liable for breaches by others which he did not induce but he is liable for his own breach and any he does induce. And we recognize that each of the individual defendants may have no duty to remain in plaintiff's employ for any given period. But, under the contract, he does have a binding contractual obligation not to strike or engage in a work stoppage in violation of the no-strike clause. And he has a duty not to induce others to do so.

Count II alleges individual breaches by the 24 named defendants as well as their inducement of individual breaches by other employees. The 24 defendants are union officers presumably familiar with the terms of the agreement, including its no-strike clause. In considering a motion to dismiss, the allegations of the complaint must be viewed in the light most favorable to the plaintiff, and

4. *Cf. J. I. Case Co.* v. *N. L. R. B.*, 321 U. S. 332, 336.

5. *Cf. Ass'n of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 210 F. 2d 623, 627, affirmed 348 U. S. 437.

all facts well pleaded must be admitted and accepted as true. *Conley* v. *Gibson,* 355 U. S. 41. And we are not now concerned with what defenses might exist; what issues may be framed by subsequent pleading, nor with what the proof to be adduced may establish as to liability or non-liability of any of the defendants. If any set of facts provable under the allegations of Count II warrants recovery under accepted principles of law it states a cause of action. *Central Ice Cream Company* v. *Golden Rod Ice Cream Company,* 7 Cir., 257 F. 2d 417.

Count II seeks to hold the individual defendants liable for their own acts in breach of the contract. They are under a contractual obligation not to participate in a strike or work stoppage in violation of the no-strike clause. The Count alleges such participation.

In addition Count II alleges that the individual defendants induced other employees to breach the agreement. Indiana, under the doctrine of *Lumley* v. *Gye,* 2 El. & Bl. 216, 118 Eng. Reprint 749, recognizes liability for malicious interference with or inducement of breach of a contract and it has applied that doctrine in a situation where a defendant charged with inducing a breach of contract is a party to the contract. *Wade* v. *Culp,* 107 Ind. App. 503, 23 N. E. 2d 615.[6]

Thus, apart from alleging a contract liability of each individual defendant for participating in a work stoppage in violation of his contractual obligation not to do so, Count II also alleges a tort liability recognized under Indiana law—tortious interference with and inducement of breach of contract obligations.

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6. In *Wade* v. *Culp* the defendant Wade, a party to the contract, was sued along with other defendants, strangers to the contract, for interfering with and inducing a breach. Cf. *Worrie* v. *Boze,* 198 Va. 533, 95 S. E. 2d 192 and *Motley, Green & Co.* v. *Detroit Steel & Spring Co.,* S. D. N. Y., 161 F. 389.

We are unable to agree with the defendants that Section 301 precludes assertion of the liability of individual employees bound by a collective agreement for participating in or inducing a work stoppage in violation of the agreement's no-strike clause where the union is being sued for an alleged breach in connection with the same work stoppage. The provision that a judgment against a labor organization shall not be enforceable against its members does not in and of itself preclude action against or recovery from individual members for their individual breaches of contract. Of course there can be but one satisfaction. The observation in *Lewis* v. *Benedict Coal Corp.*, 361 U. S. 459, 470, relied upon by defendants, that Section 301 evidences a congressional intention that the union, like a corporation, should be the sole source of recovery was made with respect to an "injury inflicted by it", and in an entirely different context from that here involved. There are strikes or work stoppages without union participation, without the union having "called a strike" or being responsible therefor. And there can be work stoppages caused and participated in by some employees but not others.

Defendants place heavy reliance on *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236. But that case involved a determination of whether a state court had jurisdiction to award damages arising out of a union activity—peaceful recognition picketing—which the Supreme Court found "arguably within the compass of § 7 or § 8 of the [National Labor Relations] Act"[7] and thus within a narrow area withdrawn from possible state activity and within which state jurisdiction must yield. The conduct of the individual defendants alleged in Count II of the complaint in the instant case is neither a protected activity under § 157 nor an unfair labor practice embraced within

7. 29 U. S. C. A. §§ 157 and 158.

the scope of § 158 of 29 U. S. C. A. A strike or work stoppage in violation of a no-strike clause of a collective bargaining agreement is not an activity protected by federal law. And as conflict is the touchstone of pre-emption the rationale of *Garmon* is inapplicable to bar prosecution of Count II.

In *Wilson & Co.* v. *United Packinghouse Workers of America,* D. C. Iowa, 181 F. Supp. 809, relied on by defendants, the individual defendant officers of the union were sued individually and as representative of the class and membership of the Local Union in a count sounding in tort only, the claimed tort (p. 818) "being the inducing of a breach of the collective bargaining agreement". Unlike Count II of the complaint here under consideration the individual defendants were not sued in a count sounding in contract as well as in tort. But, apart from these differences, we are not disposed to follow the holding of *Wilson* that Section 301 precludes maintenance of an action for inducement of breach of contract against the union officers where the union also is sued for breach of contract under Section 301. That the individual defendants in Count II are officers of the Union defendants sued in Count I does not in our judgment insulate them from liability as employees of plaintiff, a status they also occupy, on the theory advanced by defendants and employed in *Wilson* that as officers of the Union they should be immune from liability for inducing a breach of *its* contract. The doctrine of *Hicks* v. *Haight,* 11 N. Y. S. 2d 912, that an officer of a corporation is not liable for inducing a breach of the corporation's contract is relied on by analogy to support the claimed immunity. But the New York rule is not without its limitations and is not recognized in a number of jurisdictions (Fletcher on Corporations, Vol. 3, 1947 Rev. Ed. § 1001, pp. 501, 502 and 1960 Cum. Supp. pp. 56-58). In addition the no-strike

clause of the collective agreement is binding on the individual defendants as employees whereas the officers or stockholders of a corporation are not personally obligated on a contract of the corporation. A concise answer to *Wilson* is found in *Baun* v. *Lumber and Saw Mill Workers Union et al.*, 46 Wash. 2d 645, 284 P. 2d 275, 286, where it was succinctly pointed out:

> "What the statute relied on [Section 301] says • • • is that a judgment against a labor organization shall not be enforcible against its members, which is a far cry from saying that a judgment cannot be recovered against individual members in consequence of their individual actions. The argument is a complete *non sequitur.*"

It is our considered judgment that Count II stated a cause of action cognizable in the courts of Indiana and, by diversity, maintainable in the District Court. It was error to dismiss Count II.

The District Court's dismissal of Count III was predicated on its conclusion that the Norris-LaGuardia Act[8] precludes the injunctive relief sought. Plaintiff seeks a permanent injunction operating *in futuro* against all of the defendants, and all to whom notice thereof might come, restraining them from any disruption of or interference with normal employment, operation or production in connection with any dispute which might be the subject of a grievance under the grievance procedure of the collective agreement, or any extension thereof, or any other such agreement containing like or similar provisions.

Norris-LaGuardia, subject to exceptions not here pertinent, withdraws jurisdiction from federal courts to issue an injunction in a case involving or growing out of a labor dispute. It is clear from the specific allegations of Count III that the conduct and work stoppages sought to be

8. 29 U. S. C. A. § 101 and § 104.

restrained are those which result from or involve labor disputes—differences concerning "wages, hours or working conditions" which are subject to the grievance and arbitration procedures. And the relief sought would clearly prohibit persons "participating or interested in such [a] dispute" from "[c]easing or refusing to perform any work * * *"

In *Order of Railroad Telegraphers et al.* v. *Chicago & North Western Railway Co.*, 362 U. S. 330, 335, the Supreme Court after referring to the prohibitions of Section 4 of the Norris-LaGuardia Act and observing that said Act defines a labor dispute as including "any controversy concerning terms or conditions of employment * * *" stated:

> "Unless the literal language of this definition is to be ignored, it squarely covers this controversy. Congress made the definition broad because it wanted it to be broad. There are few pieces of legislation where the congressional hearings, committee reports, and the language in the legislation itself more clearly point to the necessity for giving an Act a construction that will protect the congressional policy the Act adopted."

It is implicit in the teachings of *Railroad Telegraphers* that it is not within a court's prerogatives to impose limitations on the clearly expressed congressional policy embodied in Norris-LaGuardia and that the Act removed the possibility of use of injunctive powers in any labor dispute absent a contrary mandate from the Congress. In *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana Railroad Co.*, 353 U. S. 30, relied upon by the plaintiff, the Court had earlier found such a mandate to exist in the need to accommodate Norris-LaGuardia and the Railway Labor Act so that the obvious purpose of each of these statutes adopted as a pattern of labor legislation is preserved. The exception to the ban of Norris-LaGuardia

there recognized was grounded on explicit provisions of the Railway Labor Act subjecting "minor disputes" to compulsory arbitration and declaring the Adjustment Board's decision "binding" upon both parties in order to avoid any interruption of transportation and attendant injury to the public because of such class of disputes. *Railroad Telegraphers* affirms that the doctrine of *Chicago River* operates within the narrowly confined limits of those requirements and does not even encompass other disputes in the field of railway labor-management so as to authorize injunctive relief against strikes or work stoppages involving other matters. *Locomotive Engineers* v. *M. K. T. R. Co.*, 363 U. S. 528.

Thus *Chicago River* is not a controlling precedent here and on the facts here alleged we find no mandate in Section 301 to which Norris-LaGuardia must accommodate. *Lincoln Mills* does not say that Section 301 authorizes injunctive relief clearly prohibited by Norris-LaGuardia. Compelling arbitration is not prohibited by Norris-LaGuardia—enjoining strikes or work stoppages is. And there is nothing in the general language of Section 301, nor its purposes, as disclosed by the legislative history,[9] which evidences conflict with Norris-LaGuardia.

In so concluding we find ourselves in disagreement with *Chauffeurs, Teamsters & Helpers* v. *Yellow Transit Freight Lines*, 10 Cir., 282 F. 2d 345,[10] but supported by *A. H. Bull Steamship Co.* v. *Seafarers' International Union*, 2 Cir., 250 F. 2d 326.

Plaintiff contends that inasmuch as Count III contained a prayer that the court "declare the rights of the parties" it was error for the District Court to dismiss the Count even though injunctive relief is barred. We perceive no

9. See legislative history appended to *Lincoln Mills*, 353 U. S. 448, 485-546.

10. Certiorari granted January 9, 1961.

error in this connection. Count III does pray a declaration that the no-strike and grievance procedure clauses are legal, binding and enforceable. But no allegation is made that a controversy exists between the parties as to the validity or enforceability of either clause. The Count sets forth alternative conclusions that the conduct of defendants "shows" either that they do not regard the provisions valid and binding or deliberately violated them. Such allegation fails to charge the existence of controversy over validity or enforceability requisite to support an action for declaratory judgment.

The thoroughness of the briefs of the parties has been of material aid to the Court and although we have not made specific reference to some of the many authorities cited and analyzed therein we have considered each of the arguments advanced by the parties in support of their respective positions on the issues and discussed those we deemed necessary.

We conclude that the District Court did not err in denying the motion to stay the action nor in dismissing Count III of the complaint but did err in dismissing Count II.

In Appeal No. 13137 the order of the District Court denying defendants' motion to stay is affirmed.

In appeal Nos. 13092 and 13136 that portion of the judgment order of the District Court dismissing Count III of the complaint is affirmed and that portion of the judgment order dismissing Count II of the complaint and dismissing all individual defendants from the action is reversed and the cause remanded for further proceedings not inconsistent with the views herein expressed.

No. 13137 AFFIRMED,

NOS. 13092 AND 13136 AFFIRMED IN PART,

REVERSED IN PART AND REMANDED.